
EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

- ☐ All Child Care Evaluator Manual Holders
☐ All Residential Care Evaluator Manual Holders
☒ All Evaluator Manual Holders

Transmittal No.
08RM-04**Date Issued**

November 2008

Subject:

Reference Material
Enforcement Actions – Correction of California Code of Regulations, Title 22, citations
and Regulation Interpretations and Procedures for Residential Care Facilities for the
Elderly citations.

Reason for Change:

Amend Sections 1-0030, 1-0050 and 1-1020

Filing Instructions:

REMOVE – Pages 10, 14 and 64

INSERT – Pages 10, 14 and 64

Approved:

Original signed by Thomas Stahl

11/18/08

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Date

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1-0030 GLOSSARY (Continued)

1-0030

Notice of Defense: The formal notice submitted by an applicant who has been served with a Statement of Issues, or by a licensee who has been served with an Accusation, to request an Administrative Hearing in the case.

Physical Abuse: A physical injury which is inflicted by other than accidental means. Includes acts of physical abuse done at the direction of the licensee, facility employee and/or unknown suspect resulting in injuries.

Plan of Correction: A plan developed by the licensee or authorized facility representative and jointly agreed to by the Licensing Program Analyst as to how and when a deficiency(s) shall be corrected in order to bring the facility into compliance.

Respondent: In an administrative action, the party against whom the action is filed is known as the respondent. In licensing cases, the respondent is the licensee or applicant.

Revocation: The administrative action to void or rescind a license because of serious or chronic violations of licensing laws or regulations.

Ritualistic Abuse: Ritualistic abuse is a brutal form of child abuse that involves sexual, physical, psychological, and spiritual abuse and the use of frightening rituals.

Sexual Assault: Any illegal activity performed for the sexual gratification of any of the parties involved (e.g., rape, unlawful sexual intercourse, voyeurism, exhibitionism, and child molestation) including sexual contact in which one party used his or her position of trust to obtain sex (i.e. caregiver with a developmentally disabled client or teenage foster child).

Statement of Facts: A report from a Licensing Office requesting revocation of a license, denial of an application or exclusion of an employee from a facility. The Statement of Facts fully identifies a facility and its licensee, summarizes the violations with which a licensee is charged, and lists the witnesses who might testify to the violations. The Statement of Facts is always accompanied by copies of appropriate licensing reports and other documents detailing the alleged violations.

Statement of Issues: A formal written statement, or pleading, prepared by the Legal Division which sets forth the grounds upon which an initial license application has been denied by the local Licensing Office. A Statement of Issues is based on the Statement of Facts prepared by the Licensing Program Analyst.

Subsection: The subsection is the Regulation Section denoted by a small alpha after the main Regulation Section number. Example: Sections 87155(a)(2) and 87155(a)(5) are in the same subsection. Sections 87155(a) and 87155(b) are **not** in the same subsection.

1-0050 UNLICENSED FACILITY OPERATION (Continued)**1-0050****Completed Application Requirements**

Residential Care Facilities for the Elderly; see Section 87155.

Residential Care Facilities for the Chronically Ill; see Section 87818.

Foster Family Homes; see Section 89218.

Crisis Nurseries; see Section 86518.

Other Community Care Facilities: see Section 80018.

Child Day Care Facilities;

Day Care Centers, see; Section 101169.

Family Child Care Homes; see Section 102369.

1-0055 BACKGROUND CHECK VIOLATIONS**1-0055**

Civil penalties for background check violations apply to **all** facility categories. Licensees will be subject to an immediate civil penalty assessment if they:

1. Allow any person subject to a criminal record check to work, reside or volunteer in their facility if the person has not:

- A. Obtained a criminal record clearance or exemption.

Individuals who are subject to a background check shall obtain either a California clearance or a criminal record exemption from the Department before working, residing or volunteering in the facility.

- B. Submitted a written request for a transfer of a current criminal record **clearance**.

Failure to submit a written request to transfer a current criminal record clearance prior to allowing a person to work, reside or volunteer in the facility shall result in the citation of a deficiency and an immediate assessment of civil penalties.

If an individual, working, residing or volunteering in the facility, has a criminal record **clearance** but the individual is associated to another facility and the licensee has not yet submitted a transfer request, give the licensee a transfer request form (LIC 9182) and have him/her complete the form during the visit. See EM Section 7-1100 for transfer instructions. Cite the deficiency and assess the civil penalties. See General Procedures below.

- C. Received a written approval to transfer the person's criminal record exemption to the licensee's facility.

1-1020 EVIDENCE AND DOCUMENTATION (Continued)**1-1020**

Do not contact the Department of Justice or Corrections directly. In addition, the person in question can be confronted with the information in his or her rap sheet and be asked to explain the convictions. He or she will often admit the offense(s), and the admission often can be used in lieu of a certified copy of the judgment of conviction.

Police Reports, Child Abuse Reports, Regional Center, Mental Health, and other Agency Reports. Copies of these reports can usually be obtained when the Licensing Program Analyst identifies himself or herself as an investigating officer from licensing. For Child Abuse Reports, Penal Code Section 11167 (c) allows the Licensing Agency to obtain abuse reports during the course of an investigation. Contact the Legal Division if you need assistance.

Facility records. The Licensing Program Analyst is authorized by regulations to inspect facility records. Refer to California Code of Regulations, [Title 22](#), Sections 102395, 101195, 80044, [87755](#), and [89244](#). The authority should be used to read and copy the financial, employee, medical, or other records kept by the facility. These records can be used to illustrate or prove a violation.

Photographs. It is true that pictures are worth a thousand words. They are convincing, undeniable records of burns, bruises, and other injuries. They also prove that unsanitary conditions and filth can and do exist in facilities. Make sure to identify the subject of each photo, who took the photo, when it was taken, and who was present when it was taken. To preserve the integrity of the evidence in a hearing, do not write on the front of photographs, or any other exhibits. Use a Facility Photography Report (LIC 813), a separate piece of paper or a sticker on the back of the picture for identification purposes. [See Evaluator Manual Reference Material Documentation Section 3-3510 – Photography Report].

The Licensing Program Analyst may take pictures of conditions at a facility over the licensee's objection. However, the Licensing Program Analyst should never take any action that would jeopardize his/her own health and safety. It is a Licensing Program Analyst's duty to observe, assess and document conditions in a facility. Photographs are merely one method of recording those observations.

In a physical abuse case the Licensing Program Analyst may, after requesting the victim's permission, take pictures of bruises appearing on the victim's face, neck, lower legs, arms or other visible parts of the body. If the injuries are located on parts of the body normally covered by clothing (in keeping with conventional propriety) they may be photographed only to the extent the victim feels comfortable and only with his/her consent or that of his/her parents, conservator or authorized representative, who should be present.